

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re Wholesale Grocery Products  
Antitrust Litigation

**ORDER**

Court File No. 09-MD-2090 ADM/TNL

This Order Relates to All Actions

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W. Joseph Bruckner, Esq., Elizabeth R. Odette, Esq., and Kate M. Baxter-Kauf, Esq., Lockridge Grindal Nauen PLLP, Minneapolis, MN; Richard B. Drubel, Esq., Matthew J. Henken, Esq., and Jonathan R. Voegele, Esq., Boies, Schiller & Flexner LLP, Hanover, NH; and Daniel A. Kotchen, Esq., and Daniel L. Low, Esq., Kotchen & Low LLP, Washington, DC, on behalf of the Midwest Plaintiffs.

Edward T. Dangel III, Esq., Dangel & Mattchen, Edgartown, MA, on behalf of Plaintiffs DeLuca's Market Corp., JFM Market, Inc., and MJF Market, Inc.

Martin R. Lueck, Esq., Stephen P. Safranski, Esq., Jeffrey S. Gleason, Esq., Lisa L. Beane, Esq., Eric P. Barstad, Esq., and Geoffrey H. Kozen, Esq., Robins Kaplan LLP, Minneapolis, MN, on behalf of Defendant SuperValu, Inc.

David J. Lender, Esq., Eric S. Hochstadt, Esq., and Luna Ngan Barrington, Esq., Weil, Gotshal & Manges LLP, New York, NY; Erik T. Koons, Esq., Andrew L. Lucarelli, Esq., and Aaron S. Rabinowitz, Esq., Baker Botts LLP, Washington, DC; and Todd A. Wind, Esq., and Nicole M. Moen, Esq., Fredrikson & Byron, PA, Minneapolis, MN, on behalf of Defendant C&S Wholesale Grocers, Inc.

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On March 26, 2013, the Court entered an Order [Docket No. 449] holding in abeyance Bills of Costs [Docket No. 439, 440] filed by Defendants SuperValu, Inc. ("SuperValu") and C&S Wholesale Grocers, Inc. ("C&S") (collectively, "Defendants"). All claims have now been resolved in this action, and Defendants have filed additional Bills of Costs [Docket Nos. 1270, 1317] that incorporate the Bills of Costs filed in 2013.

The Midwest Plaintiffs argue that the Court should stay any award of costs to C&S by the Clerk until after the Eighth Circuit issues a decision on the Midwest Plaintiffs' pending appeal. See Midwest Pls.' Obj. [Docket No. 1277] at 4–5. The request for a stay is denied.

As the Eighth Circuit has recognized, costs may be awarded while an appeal on the merits is pending. Blakley v. Schlumberger Tech. Corp., 648 F.3d 921, 930 (8th Cir. 2011) (affirming costs awarded while an appeal was pending because plaintiff “cited no authority prohibiting a district court from granting costs after a party has filed a notice of appeal”); see also Abdel-Ghani v. Marketsource, Inc., No. 14-4136, 2016 WL 5952740, at \*1 (D. Minn. Oct. 13, 2016) (“[Plaintiff’s] argument that costs cannot be taxed while an appeal is pending is not only without support in the local rules, but also without support in the decisions of the Eighth Circuit and this Court.”).

Here, the benefit of reviewing C&S’s Bill of Costs while this multi-year complex MDL litigation is still relatively in mind outweighs the potential problems that may result if the Midwest Plaintiffs later prevail on appeal and the award of costs is vacated. See, e.g., Maytag Corp. v. Electrolux Home Prods., No. 04-4067, 2006 U.S. Dist. LEXIS 89383, at \*6–7 (N.D. Iowa Dec. 11, 2006) (“The possibility that the underlying judgment might be reversed, with the result that the award of costs must also be reversed, is simply too speculative to outweigh the benefit of the trial court conducting a review of the bill of costs while the case is still fresh.”).

Based on the foregoing, and all the files and records herein, IT IS HEREBY ORDERED:

1. the Bills of Costs filed by Defendants in 2013 are no longer held in abeyance; and
2. the Midwest Plaintiffs’ request to stay an award of costs to C&S is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: November 14, 2018.